

CCRB INVESTIGATIVE RECOMMENDATION

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|--|---|---------------------------|--|
| Investigator: Benjamin Shelton | Team: Squad #11 | CCRB Case #: 201906425 | <input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Friday, 06/28/2019 6:45 PM | Location of Incident: 776 Lorimer Street | 18 Mo. SOL 8/14/2021 | Precinct: 94 |
| Date/Time CV Reported Tue, 07/09/2019 1:55 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Mon, 07/22/2019 1:36 PM |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|---------------------------|--------|--------|---------|
| 1. POF Shantell Mckinnies | 06756 | 937070 | 094 PCT |
| 2. LT Hong Chen | 00000 | 934189 | 094 PCT |
| 3. POM Alejandro Montalvo | 16521 | 927221 | 094 PCT |
| 4. POM Fermin Bueno | 10254 | 948710 | 094 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|--------------------------|-----------|--------|----------|
| 1. POM Christophe Levine | 20306 | 958811 | 094 PCT |
| 2. SGT Igor Ubavin | 4717 | 937851 | 094 PCT |
| 3. POM Daniel Kaider | 19324 | 962513 | 094 PCT |
| 4. POM Sebastian Escobar | 11099 | 960503 | 094 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------------|--|-----------------------------|
| A.POF Shantell Mckinnies | Force: Police Officer Shantell McKinnies used pepper spray against individuals. | |
| B.POF Shantell Mckinnies | Force: Police Officer Shantell McKinnies used pepper spray against § 87(2)(b) | |
| C.POM Fermin Bueno | Abuse: Police Officer Fermin Bueno did not obtain medical treatment for § 87(2)(b) | |
| § 87(2)(g), § 87(4-b) | | |
| § 87(2)(g), § 87(4-b) | | |
| § 87(2)(g), § 87(4-b) | | |

Case Summary

On July 9, 2019, § 87(2)(b) filed this complaint in Spanish with IAB, generating log § 87(2)(b) § 87(2)(b) filed as a complainant non-witness on behalf of her son, § 87(2)(b) who was 16 years old at the time. On July 22, 2019, the CCRB received this complaint via IAB log § 87(2)(b)

On June 28, 2019, at approximately 6:45 p.m., § 87(2)(b) was in the male locker room of the McCarren Park Public Pool at 776 Lorimer Street in Brooklyn attempting to change clothes and leave. PO Shantell McKinnies of the 94th Precinct discharged her pepper spray which came into contact with § 87(2)(b) and other unidentified individuals within the locker room (**Allegations A and B: Force,** § 87(2)(g), § 87(2)(b) immediately exited the locker room and allegedly told PO Fermin Bueno of the 94th Precinct at the exit of the public pool that he needed medical attention to which PO Bueno allegedly responded, “Go home and tell your parents” (**Allegation C: Abuse of Authority,** § 87(2)(g)

No arrests or summonses were made or issued regarding this incident.

The investigation received body-worn camera (BWC) footage from the NYPD's Legal Bureau from 94th Precinct officers PO Montalvo and PO Daniel Kaider (BR 01-05).

Findings and Recommendations

Allegation A – Force: Police Officer Shantell McKinnies used pepper spray against individuals.

Allegation B – Force: Police Officer Shantell McKinnies used pepper spray against § 87(2)(b)

██████████ No available footage captured these allegations as all BWC records events occurring afterward (BR 01-05).

§ 87(2)(b) stated that he was at the public pool with friends “§ 87(2)(b)” and “§ 87(2)(b)” when, after an earlier altercation between individuals he did not know, NYPD officers responded and told § 87(2)(b) and the other pool-goers they had to leave (BR 06). § 87(2)(b) went inside the locker room with his friends and other male civilians. At least three officers were already inside the locker room, including PO McKinnies. § 87(2)(b) and his friends were quiet and were focused on leaving the locker room quickly because they did not like how crowded it was. All of the officers told everyone to vacate the locker room. A group of approximately seven or eight teenagers whom § 87(2)(b) did not know were standing in front of PO McKinnies. § 87(2)(b) locker was next to these boys. The boys yelled many statements, including, “Yo,” and various things about the NYPD including, “NYPD suck my dick.” PO McKinnies held her pepper spray canister up with her right hand and sprayed toward the ceiling, moving her arm back and forth. § 87(2)(b) held up his bookbag to his face, but the pepper spray still made contact with him. After several seconds, § 87(2)(b) felt a lot of pain to his face and a burning sensation in his chest. Everyone in § 87(2)(b) vicinity had red eyes, including § 87(2)(b) and § 87(2)(b) and all civilians ran outside. § 87(2)(b) saw two children who appeared to be between 11 years old and 12 years old screaming and crying as they ran outside. There was also a male adult who appeared to be affected by the spray. The seven or eight boys who had been yelling were affected most by the spray. They yelled and cursed as they ran out of the locker room. § 87(2)(b) provided no other identifying information than first names for his friends and no civilian witnesses to these allegations were identified or available to the investigation.

PO McKinnies stated that just before she used her O.C. spray, she was posted outside the public pool with her partner PO Christopher Levine, PO Montalvo, their supervisor Sgt. Igor

Ubavin, and at least a couple of other officers whom PO McKinnies did not recall due to a recent crime condition of physical fights at the pool and to assist with dismissal (BR 07). A Parks Department worker who was attempting to close the pool came out and told officers they needed assistance with clearing a group of children who would not leave the pool. Officers entered the pool area to observe Parks Department personnel telling everyone to leave the pool. A large number of civilians were complying with those orders. On the far side of the pool from where officers were was a group of approximately 30 male teenagers jumping in and out of the pool who were not complying with instructions to leave. Eventually, the group exited the pool and ran inside the male locker room. PO McKinnies, PO Levine, PO Montalvo, and Sgt. Ubavin followed the group into the locker room. PO McKinnies did not recall other officers inside the locker room, or if others went inside the locker room. The disorderly group of teenagers banged on the lockers and yelled statements PO McKinnies did recall. Some in the group stood on changing benches. PO McKinnies and other officers repeatedly and loudly ordered the group to leave the locker room. The group did not comply and many continued banging on the lockers. Most of the group of males was concentrated approximately eight feet in front of PO McKinnies. Other civilians at the pool, including families with young children, were in the locker room behind her. PO McKinnies took out her pepper spray and sprayed two short bursts in the air above the group of disorderly teenagers. Everyone who was sprayed was in the disorderly group. The group dispersed and left the locker room after PO McKinnies used the pepper spray. PO McKinnies did not take any other steps other than verbal instructions to leave before using her pepper spray. She did not recall if she warned anyone she would use pepper spray, PO McKinnies felt the use of pepper spray was necessary because it would hit a large amount of people and get them to leave the locker room because it provides a burning sensation. She believed it was effective since the group left the locker room. PO McKinnies learned after the incident from Sgt. Ubavin that § 87(2)(b) father had complained to Sgt. Ubavin and Lt. Chen, that his son had been hit with pepper spray. Lt. Chen and Sgt. Ubavin informed PO McKinnies that § 87(2)(b) had been taken to a hospital for related treatment. PO McKinnies believed that if § 87(2)(b) was hit with the pepper spray, he must have been in the disorderly group. However, she did not recognize § 87(2)(b) when presented a photograph of him.

PO McKinnies prepared Threat, Resistance, and Injury (TRI) report § 87(2)(b) regarding these allegations (BR 08). It notes PO McKinnies was generally pushed and shoved by (an) subject(s) and that she used force in discharging her pepper spray which injured (a) subject(s) who accepted hospital treatment for irritated eyes and skin. She used force to protect members of the public, herself and other officers and to overcome resistance or aggression. The only civilian/subject on the report was § 87(2)(b) but it is noted he did not resist or use force and was not injured.

§ 87(2)(b) medical records note that he was treated on § 87(2)(b) at § 87(2)(b) in Brooklyn for mild symptoms of burning eyes with initial shortness of breath and burning on his upper body with a precondition of asthma (BR 09). He was diagnosed with chemical conjunctivitis due to pepper spray and prescribed eye drops and directed to use his inhaler as necessary.

If possible and in order to gain voluntary compliance, officers should provide verbal warning before discharging pepper spray. If possible, officers are to avoid using pepper spray on young children. Officers are to avoid discharging pepper spray in small contained areas or indiscriminately over a large area for disorder control. Officers are advised to use pepper spray against subjects who are actively resisting arrest or exhibiting active aggression, or to prevent individuals from physically injuring themselves, officers, or other individuals. Pepper spray shall not be used in situations that do not require the use of physical force. NYPD Patrol Guide Procedure 214-02 (BR 10).

Neither § 87(2)(b) nor PO McKinnies described any physical aggression by any civilians inside the locker room nor did they describe any need for physical force by officers. PO McKinnies did not intend to arrest anyone and despite dealing with a non-compliant and disorderly group of

teenagers, did not meet any physical resistance or identify any real potential for injury as reasons she used pepper spray. Additionally, she used the spray only to gain control of a disorderly group in a small contained area that included young children, three factors that the NYPD's Patrol Guide instructs officers to avoid. Neither PO McKinnies nor § 87(2)(b) recalled her providing any verbal warning.

§ 87(2)(g)

Allegation C – Abuse of Authority: Police Officer Fermin Bueno did not obtain medical treatment for § 87(2)(b)

No BWC footage captured this allegation, however officers are captured by PO Montalvo's BWC at the specific location where § 87(2)(b) alleged it to have occurred (BR 04). At 0:15, PO Montalvo approaches a small group of officers including Lt. Chen and PO Bueno as they appear to be speaking to at least one male civilian just outside the exit to the public pool. PO Bueno has a beard and a medium skin tone with no tattoos visible on his arms. No audio is captured at this point. At 0:30, the male civilian starts speaking to PO Montalvo as another individual appears to speak to Lt. Chen and PO Bueno to the right of the camera. PO Montalvo discusses with the civilian the disorderly group but no mention of pepper spray nor any medical treatment requests are captured. At 2:08, Lt. Chen and PO Bueno are still standing by the exit of the pool. At 2:30, PO Montalvo walks away from the civilian.

Another portion of PO Montalvo's BWC captures officers while in the pool area (BR 03). At 0:35, PO Levine is depicted with a light skin tone and he does not have a beard or tattoos on his arms. At 0:48, PO Escobar is depicted with a light-medium skin tone and he does not have a beard or tattoos on his arms.

BWC footage from PO Kaider's camera captures PO Montalvo exiting the locker room at 0:15 (BR 02). He has a light skin tone and has no beard or tattoos visible on his arms.

§ 87(2)(b) stated that he exited the public pool and saw a dark-haired bearded male Hispanic uniformed officer standing shorter than 5'8" in his 40s weighing approximately 160 pounds with a slim-muscular build, potentially with tattoos covering both arms, standing just outside the exit at the bottom of the staircase on the right side (BR 25). The officer had similar medium skin tone to § 87(2)(b) which is depicted in a photograph taken of him at the CCRB (BR 26). He was the only officer standing outside and many civilians approached him to complain. The officer told everyone he did not know what happened inside the locker room and that they should report any problems to the 94th Precinct. The officer repeatedly ordered § 87(2)(b) and other civilians to leave the block. § 87(2)(b) approached him and asked, "Why the fuck you sprayed everyone?" The officer told him to watch his tone and go home and that he did not know what happened inside the locker room. § 87(2)(b) stated, "I think I need to go to the hospital." The officer responded, "Go home and tell your parents." § 87(2)(b) and his friends left to wash in a sprinkler at a nearby playground and did not receive any medical treatment immediately following the incident.

Due to the COVID-19 pandemic occurring in the latter stages of the investigation, no photo viewing for § 87(2)(b) to potentially identify the specific subject officer was sought.

PO McKinnies stated PO Levine and PO Montalvo were both on scene and who are both Hispanic males. Lt. Chen was interviewed and named PO Bueno as his operator, another Hispanic male (BR 11). PO Levine was interviewed and identified PO Sebastian Escobar, a fourth Hispanic male identified on scene at the time of this allegation, in the above-referenced BWC footage (BR 12). No other Hispanic males were identified in BWC footage or in officer testimony including that from PO Montalvo, Sgt. Ubavin, PO Bueno, and PO Escobar (BR 13-16).

PO Bueno is 5'9" and was 39 years old on the incident date (BR 18). PO Montalvo is 5'7" and was 44 years old on the incident date (BR 17). PO Escobar is 5'8" and was 25 years old on the incident date (BR 19). PO Levine is 6'0" and was 28 years old on the incident date (BR 12).

No Event information was produced for this incident (BR 20).

PO Bueno stated that he was outside the pool by the exit when Parks Department personnel requested assistance with the crowd inside the pool. Lt. Chen told PO Bueno that they would both stand by to handle spill out in street and the other officers on scene would handle the area inside the pool. After 10 to 15 minutes, 200 to 300 people started exiting the pool. Multiple people complained and verbalized in an aggressive and loud manner that they were “maced” and the “NYPD violated them.” Lt. Chen and PO Bueno directed patrol down the block away from the pool to disperse any crowds forming. PO Bueno observed Sgt. Ubavin outside generally once people started leaving and afterward and did not recall anything he did or any law enforcement action he took. PO Bueno recalled PO Montalvo was next to himself while people left the pool. PO Bueno stood curbside directly in front of the entrance throughout. PO Montalvo had a verbal dispute with a female in which she was upset and cursing. PO Bueno did not know what they were arguing about and did not know what PO Montalvo told her. He did not recall PO Montalvo interacting with any other civilians. He could not speak to any other one-on-one interactions by officers with any civilians. PO Bueno never told any civilians to watch their tone or go home, nor told anyone that he did not know what happened in the locker room. He did not hear any officers do so either. PO Bueno did not hear any civilian state they think they needed to go to the hospital. He did not tell anyone to go tell their parents nor hear any other officer tell that to a civilian in response to a request for medical attention. PO Bueno did not refuse to provide or assist in providing medical attention to anyone on scene. He did not observe any officers refuse to do so. PO Bueno was presented a photograph of § 87(2)(b) and did not recognize him or recall him on scene.

PO Montalvo was posted outside the public pool when he responded to the Parks Department’s request for assistance with the disorderly group of teenagers. When he and other officers followed them inside the male locker room, people were getting their belongings. There were so many people inside the locker room that PO Montalvo and other officers could not differentiate those from the disorderly group. The pool dismissal and clearance was typical aside from it being a large number of people. PO Montalvo left the locker room while there were still a large number of people inside. PO Montalvo did not know if there were still people from the disorderly group inside the locker room. PO Montalvo stood at the exit to the pool to make sure that everyone left in an orderly fashion. PO Montalvo was not aware of any officer using pepper spray inside the locker room. PO Montalvo did not remember anyone leaving the locker room complaining that they had been pepper sprayed. No one exited the locker room and requested medical attention. PO Montalvo denied that anyone exited the locker room and asked him, “Why the fuck you sprayed everyone?” PO Montalvo denied that he told anyone, “Watch your tone. Go home.” PO Montalvo never refused to obtain medical attention for someone who left the locker room. PO Montalvo was presented a photograph of § 87(2)(b) and did not recognize him and denied that he refused to obtain medical attention for § 87(2)(b).

PO Levine was also posted outside the public pool and was in the male locker room when PO McKinnies discharged her pepper spray. Once all civilians had exited the locker room, PO Levine and other officers grouped together outside the pool in front of the exit. He observed Lt. Chen and did not recall any other officers on scene except for PO McKinnies, Sgt. Ubavin, and PO Montalvo and his partner. PO Levine did not recall speaking to civilians outside the pool. PO Levine denied that anyone exited the locker room and asked him, “Why the fuck you sprayed everyone?” PO Levine denied that he told anyone, “Watch your tone. Go home,” in response to a request for medical treatment. He did not hear any civilians complain about the pepper spray. He did not recall anyone asking for medical attention and did not refuse to provide any. No one told him they needed to go to the hospital. PO Levine was presented a photograph of § 87(2)(b) and did not recognize him or recall any interactions § 87(2)(b) had with any officers.

PO Escobar was also posted outside the public pool and was in the male locker room when PO McKinnies discharged her pepper spray. Directly after PO McKinnies discharged her pepper spray, the crowd in the locker room began to disperse and he also left. He observed PO Montalvo

just outside the locker room within the pool area telling civilians to disperse. PO Escobar went directly to his vehicle and as he exited the public pool, he observed Lt. Chen and PO Bueno by the stairs leading out of the pool. Civilians were in their vicinity, but he did not observe any interactions between them and any officers. PO Escobar did not hear anyone outside complain of being pepper sprayed. PO Escobar did not hear anyone ask him or any other officer, “Why the fuck you sprayed everyone?” or “I think I need to go to the hospital.” PO Escobar did not tell any civilians or hear any other officers state, “Watch your tone, go home,” or “Go home and tell your parents.” He did not hear anyone request medical attention from him or any other officers. He was not aware of any officers refusing medical attention to anyone. PO Escobar was presented a CCRB photograph of § 87(2)(b) and did not recognize him or have any interaction with him.

PO McKinnies, Lt. Chen, and Sgt. Ubavin all denied witnessing this allegation or any requests for medical treatment by civilians.

PO Levine and PO Escobar both testified to being aware of PO McKinnie’s pepper spray use in the locker room, contrary to alleged statements by the subject officer, and both officers are documented to be 5’8” or taller with no beards. PO Montalvo and PO Bueno were the only two Hispanic male officers captured by the BWC at the specific location where § 87(2)(b) alleged an officer refused his request for medical treatment and were both depicted interacting with civilians. Both denied knowledge of PO McKinnie’s pepper spray use, consistent with alleged statements by the subject officer. Only PO Montalvo is documented to be shorter than 5’8” and in his 40s at the time of the incident. However, as PO Bueno is documented to have a similar skin tone to § 87(2)(b) and having a beard, while only being an inch taller and only at least year younger than the alleged subject officer, the investigation identified him as the subject of this allegation. No Hispanic male officers were documented to have tattoos on their arms. No officer corroborated § 87(2)(b) allegation and no other evidence corroborates or refutes it.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- § 87(2)(b) [REDACTED]
 - [REDACTED]
 - [REDACTED]
- PO McKinnies has been a member of service for 16 years and has been subject of eight other allegations in five other CCRB complaints with no substantiations (see officer history)
 - § 87(2)(g) [REDACTED]
- PO Bueno has been a member of service for 10 years and has been subject of nine other allegations in five other CCRB complaints with four substantiations (see officer history):
 - 201607174 involved substantiated allegations of a chokehold and physical force. The Board recommended charges and the NYPD found him not guilty with no imposed penalty.
 - 201907797 involved substantiated allegations of deleting information from an electronic device and searching a recording device. The Board recommended Command Discipline A and the NYPD found no finding with no imposed penalty.
 - § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- This case was deemed unsuitable for mediation due to § 87(2)(b) [REDACTED] physical injuries.
- On September 29, 2020, the Office of the New York City Comptroller confirmed no Notices of Claim had been filed regarding this incident (BR 23).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]

Squad No.: 11

Investigator: Benjamin Shelton Inv. Benjamin Shelton 5/25/2021
Signature Print Title & Name Date

Squad Leader: Edwin Pena IM Edwin Pena 05/25/21
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date